

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

**PAUL DAMON AND NATALIA
OLINETCHOUK, ON BEHALF OF
THEMSELVES AND ALL OTHERS
SIMILARLY SITUATED**

APPELLANTS,

**v.
CITY OF KANSAS CITY, MISSOURI
AND AMERICAN TRAFFIC
SOLUTIONS, INC.**

RESPONDENTS.

DOCKET NUMBER WD75363

DATE: November 26, 2013

Appeal From:
Jackson County Circuit Court
The Honorable J. Dale Youngs, Judge

Appellate Judges:
Division Three: Cynthia L. Martin, Presiding Judge, James M. Ellis, Judge and Gary D. Witt,
Judge

Attorneys:
Ryan A. Keane, St. Louis, MO and Mitchell I. Burgess, Kansas City, MO, for appellants.

Chad Stewart, Kansas City, MO, for respondent City of Kansas City.
Jane E. Dueker, St. Louis, MO for respondent American Traffic Solutions.

MISSOURI APPELLATE COURT OPINION SUMMARY

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No. WD75363

Jackson County

Before Division Three: Cynthia L. Martin, Presiding Judge, James M. Ellis, Judge and Gary D. Witt, Judge

Appellants Paul Damon ("Damon") and Natalia Olinetchouk ("Olinetchouk") appeal the dismissal on the pleadings of their class-action petition in which they sought declaratory relief, injunctive relief, and damages against Respondents City of Kansas City (the "City") and American Traffic Solutions, Inc. ("ATS"). Appellants were issued notices of violations pursuant the City's ordinance governing red-light cameras and question the validity of the ordinance on numerous grounds. Two subclasses of plaintiff's were identified. Damon and other similarly situated subclass members paid the fine assessed pursuant to the notice of violation. Olinetchouk and other similarly situated subclass members have not yet paid the fine.

Reversed and Remanded.

Division Three holds:

- (1) Damon and others similarly situated have standing to bring these claims.
- (2) Damon and others similarly situated have not waived any constitutional claims and are not estopped to bring this challenge, based on the inadequacy of the notice within the notice of violation.
- (3) Olinetchouk and others similarly situated do not have an adequate remedy at law.
- (4) The City has the authority to enact such an ordinance.
- (5) Whether the ordinance bore a substantial and rational relationship to the health, safety, peace, comfort and general welfare" of its citizens is a question for remand.

- (6) Whether the ordinance was enacted merely as a revenue-raising scheme is a question for remand.
- (7) The ordinance conflicts with statutes relating to assessment of points.
- (8) Whether the ordinance is criminal or civil in nature is a question for remand.
- (9) The rebuttable presumption contained within the ordinance is unconstitutional if the ordinance is criminal in nature.
- (10) Whether the ordinance violates due process is a question for remand.
- (11) Appellants properly alleged the elements of unjust enrichment so as to survive a motion to dismiss.

Opinion by Gary D. Witt, Judge

November 26, 2013

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